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1 Mr. Nix. Is there further discussion...
2 Approved For Release 2004/05/05 : CIA-RDP81M00980R000700110078-8 *Amendment?*
3 Those in favor of the amendment will say aye.

4 Mr. Derwinski. Aye.

5 Mr. Nix. Those oppose no.

6 (Chorus of noes.)

7 Mr. Nix. In the opinion of the Chair the noes have it.
8 The amendment is not agreed to.

9 Mr. Ford. Mr. Chairman.

10 Mr. Ford. I don't have an amendment, but I have a request
11 that the report accompanying this bill carry language to make
12 clear that on Page 7, Section 3, starting on Line 16 reading
13 down to Line 18, the words "local rates are used", that the
14 report reflect our intention that we are not changing the present
15 law which limits this principles application to blue collar
16 workers so that no one will read this provision and think that
17 we are intentionally changing the present law with respect to
18 comparability in setting wages.

19 Mr. Nix. Any discussion on the request by the Gentleman
20 from Michigan?

21 (No response.)

22 Mr. Nix. If not, without objection it's agreed to.

23 Mrs. Schroeder. Mr. Chairman.

24 Mr. Nix. Mrs. Schroeder,

25 Mrs. Schroeder. Mr. Chairman, I have an amendment to Titl
I. I think members of the Committee have it front of them,

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1 Mr. Chairman. It starts on Page 8, and I would ask unanimous
2 consent that all of the little pieces be considered together.

3 It is basically a whistleblower amendment, and it obviously spills
4 over a bit. If I may have unanimous consent to consider it
5 as one parcel, I think we could expedite.

6 Mr. Derwinski. Mr. Chairman.

7 Mr. Nix. Mr. Derwinski.

8 Mr. Derwinski. I presume that the Gentlelady will explain
9 each paragraph of her amendment.

10 Mrs. Schroeder. If the Gentleman has one, it's very unique
11 and it is kind of self-explained on the side. We will get you
12 a copy immediately if you don't have one.

13 Mr. Derwinski. I have a copy of the amendment.

14 Mrs. Schroeder. That's a copy of the amendment, and we will
15 explain it, yes.

16 Mr. Nix. Without objection, the unanimous request is agreed
17 to.

18 Mrs. Schroeder. First of all, I want to thank three other
19 members who have been very, very helpful in preparing this amend-
20 ment, Congressmen Hanley, Gilman, and Lehman. They have been
21 very supportive and have done a lot of work on this amendment.
22 And it has been a bit frustrating because it is difficult and
23 it does spread into other areas.

24 Let me be very terse and attempt to say what this does.

25 This goes to the whistleblowing area that, I think, so many of

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us have heard an awful lot about. And my dual service on the

Armed Services Committee, I think we have been more familiar with
it than most.

The bill does do some things for whistleblowers. This is
basically to provide a little more coverage for whistleblowers.
Let me explain in particular what I mean by that.

First of all, under the bill as it is right now, a person
is protected as a whistleblower if they reveal something that is
a violation of the law. Now, I feel that is too limited a defini-
tion. And in this amendment that I have proposed we would
expand the definition to include "evidence of mismanagement, waste
of funds, abuse of authority, or a substantial and specific
danger of public health or safety." That would particularly
like the flu shot area or some other area like that.

We go on to say that any whistleblowing that involves areas
where national security issues or private, or confidential re-
lationships are disclosed the whistleblower must pursue within
the government disclosure first. They must go the special counsel
of the merit system protection board or to the agency head. They
cannot go outside first. So, we draw a bright line between the
private, confidential, and national security areas and the other
areas, which would be mismanagement, waste of funds, abuse of
authority, or substantial and specific danger to public health
and safety.

I feel that this expanded definition is very needed because

1 of the difference between the cases that we've had in front of
2 us on this Committee over a long period of time. And I think it
3 would be needed to really protect whistleblowers.

4 Secondly, what it does is that it does state clearly again
5 that whistleblowing is a protected activity within the principles
6 of the merit system. And it goes on to expand the definition of
7 a personnel action. Because one of the things that we've seen
8 happening to whistleblowers is that they have been subjected to
9 gradual harrassment or assignment to impossible jobs, or relocated
10 to the Anartica, or some other such thing.

11 So, we have expanded the definition of what a personnel
12 action might be to include those types of things. It's not just
13 firing and so forth.

14 And it also changes who is in control of this. Under the
15 President's bill or under the bill we have in front of us. --
16 I don't know whose bill it is right at the moment. It's a little
17 bit of everybody's, I guess -- under the hodgepodge bill -- It
18 says in there that the Office of Personnel Management has the
19 final authority. We give it to the special counsel which is
20 where I think it really belongs, because we are clearly trying
21 to put the merit system under special counsel and management
22 issues under the Officer of Personnel Management.

23 If you leave it in the bill as it is right now, I think that
24 you would be subject to not forcing protection of whistleblowers
25 if the Office of Personnel Management. And I think

1 that this is important, that we keep it in the merit section
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2 side and the management side be on the other side. And special
3 counsel could ask for help in trying to alleviate some of the
4 problems that the whistleblower may or may not come up with.

5 I could go on and on as to why I think this is a very, very,
6 very important amendment. But I think most of us have been aware
7 of it. There has been many, many record inserts of whistleblowing
8 cases -- different cases. A lot of the people who have been
9 very courageous have had their toes stepped on in many instances.
10 I think it would be very difficult to be against this, and I think
11 what it is saying is "yes, we want Civil Service reform, and we
12 also want to make sure that funds aren't wasted and that people
13 within the Civil Service are free to speak out and live under
14 jeopardy of being sent to Anartica or whatever."

15 Obviously there are protections so that if it is the same
16 person using whistleblowing as an excuse every single time, they
17 are going to pick that out. I know people will say "Well, that's
18 just the label that they will use continually to be able to
19 harass management." But clearly there are protections against
20 that, too.

21 So, I would urge people to support it. And again I want
22 to thank many other members for helping in this.

23 Mr. Udall. Mr. Chairman, I think this is a good amendment,
24 and I commend Mrs. Schroeder for the work she has done on it.
25 We've got to strike a balance between the danger that every

1 member of the Federal Civil Service is going to say "I'm a
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3 whistleblower." And even the most egregious conduct would be
4 defended as whistleblowing.

5 On the other hand, we haven't had adequate protection for
6 employees -- honest, good, faithful employees, who are pointing
7 out waste and mismanagement.

8 I understand this amendment -- Maybe Mrs. Schroeder can
9 correct me -- is quite similar to what the Senate Committee did
10 in the course of its markup.

11 Mrs. Schroeder. That's correct.

12 Mr. Udall. I am not sure that it is totally acceptable to
13 the Administration. But I think it is a step forward and improve
14 the bill, and I am personally going to vote for it.

15 Mrs. Schroeder. I thank the Gentleman from Arizona. It
16 is very similar to what the Senate has done, and I think it is
17 a very good step forward.

18 Mr. Derwinski. Mr. Chairman.

19 Mr. Nix. Mr. Derwinski.

20 Mr. Derwinski. I would only suggest as a matter of practi-
21 cle procedure here that since some of us didn't see this --
22 There's always that very thin line between the intent of an
23 author and the explanation that an author provides and then an
24 interpretation that eventually develops. I would hope that we
25 would, therefore, by the time we write the Committee report have
a very precise and proper explanation of just what this amendment

1 does as it's accepted in the bill.
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2 The term whistleblower is like motherhood. And we are all
3 for whistleblowing evidently. At the same time it does raise
4 an awful lot of questions. It raises the question of misuse of
5 that very phrase and misuse of a technique. And I am sure that
6 the Lady wants to protect the administrators of government from
7 misuse of what is basically a good procedure.

8 Mrs. Schroeder. If the Gentleman would yield. I think we
9 have attempted to very closely define what whistleblowing mean
10 on the second apge of the amendment, the third portion down there
11 where it says "Page 12, Line 23 after "or regulation" insert
12 the following. And that is the definition that we put in there.
13 It is very similar to the one in the Senate.

14 I think that the Gentleman makes an excellent point. You
15 can say that sneezing was whistleblowing because you showed that
16 someone came to the office with a cold and spread it. But we
17 have attempted to draw the line very tightly and to put in that
18 distinction between national security, private, and confidential
19 matters also. I. Certainly would welcome if the Gentleman sees
20 something in here we would be more than welcome to try to do
21 something in the report. But it is very similar to the Senate.
22 And, as I say, Mr. Gilman, Hanley, and Lehman have worked very
23 hard on it, too. And hopefully it will be acceptable.

24 Mrs. Spellman. Mr. Chairman.

25 Mr. Hanley. Mr. Chairman.
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1 Mr. Hanley. Mr. Chairman, I want to commend the Gentlelady
2 from Colorado for the initiative that she has taken, and I would
3 hope very much that her amendment would enjoy broad support in
4 the Committee.
5

6 In an effort to hopefully better accomplish the Gentlelady
7 intent, I have an amendment to Mrs. Schroeder's amendment. I
8 believe that the amendment is probably on the desk of each of
9 the members.

10 Although it is a two-page amendment, and hopeful that we
11 might expedite this process today, essentially my addition, I
12 believe is necessary to insure that that agency conducts a
13 thorough investigation of the charge. So, if an employee is
14 convinced that such a complete investigation will take place,
15 he or she will likely to see internal resolution of the problem
16 before going public. This amendments mandates that an agency
17 report on the conduct and outcome of its investigation. It does
18 not impose a major workload or paperwork requirement.

19 I hope these reports can in most cases be limited to but
20 one page. Finally, these reports will not disclose the name of
21 the employee who brought the wrongdoing to the attention of the
22 agency. Essentially that is what this amendment is all about.
23 I believe that it complements the intent Mrs. Schroeder has, and
24 hope very much that --

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1 Mr. Hanley. I would be delighted to yield to the Gentleman
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2 from Missouri.

3 Mr. Clay. I, of course, support the amendment. But I would
4 like to point out that in Mrs. Schroeder's amendment she has a
5 Section A, B, and C. And when you get down to D in your amend-
6 ment you are only referring to laws, rules, and regulations, where
7 she talks about mismanagement, waste of funds, abuse of authority,
8 et cetera. Now, would you be agreeable to accept that language.

9 Mr. Hanley. Yes, the intent is to concur with -- My intent
10 is to concur with the intent of Mrs. Schroeder. So, I am most
11 amenable to any technical changes that might be required to do
12 as you suggest.

13 Mrs. Schroeder. Will the Gentleman yield?

14 Mr. Hanley. I would be delighted to yield to Mrs. Schroeder.

15 Mrs. Schroeder. I thank the Gentleman, and if we could
16 add that portion just to make sure that we are not going to the
17 violation of law definition, I think this is an excellent of what
18 we're doing. And I think it really targets in what we are at-
19 tempting to do, and I appreciate the Gentleman's amendment.

20 Mr. Hanley. I appreciate the Gentleman's comments.

21 Mrs. Spellman. Mr. Chairman.

22 Mr. Nix. Mrs. Spellman.

23 Mrs. Spellman. Mr. Chairman, I would like to point out --
24 and I do want to commend both Mrs. Schroeder and Mr. Hanley for
25 working on this particular section which I think is vital. I
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1 do want to point out, too, that I am going to be voting with
2 both of them because I am taking it for granted that what they
3 are doing is good, worthwhile, and will improve legislation.
4 But indeed I do wish that we had had a day to take a look at
5 these amendments because they are so very important. But we do
6 have to move ahead, and that was decided earlier.

7 I hope that within the amendment we've made it very clear
8 that there is a difference between a "fink" and a whistleblower.
9 I hope that within the amendments -- and I haven't gone through
10 them, and I don't know -- that we have made it clear that there
11 is a normal procedure that a person would go through. That if
12 I had a complaint about this Committee, that blowing the whistle
13 to the television station is not the way I should be going. I
14 should first go to the Chairman of the Committee. If the Chair-
15 man of the Committee refuses to change what to me obviously
16 needs to be changed, then I should go the proper route and pro-
17 bably go to the Speaker or the Democratic caucus. And when all
18 fail, then I would blow the whistle to the public.

19 I hope that that kind of procedure is embodied in these
20 amendment.

21 Mrs. Schroeder. If the Gentlelady will yield, I think that
22 that's what we tried very carefully to do, because we obviously
23 don't want a blanket excuse for everybody. And yet on the other
24 hand, we all know the very tragic cases that have occurred in
25 the past. And I

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1 think especially with Mr. Hanley's amendment we have made that
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2 doubly clear.

3 Mrs. Spellman. Are we -- and may I ask this question, Mr.
4 chairman -- are we making sure that everybody who doesn't prevail
5 in a complaint that he or she has doesn't end up calling himself
6 a whistleblower? Can you go through the normal complaints and
7 then decide that the real reason you are in this process altogether
8 is that there has been corruption?

9 Mrs. Schroeder. If the Gentlewoman will yield, I think if
10 you look at the amendment, the special counsel does screen them.
11 And we do have a definition in there of what constitutes whistle-
12 blowing. So, he has a screen and a screening process, and the
13 authority to screen. So, I think he certainly has been given
14 that authority.

15 Mrs. Spellman. Fine.

16 Mr. Derwinski. Mr. Chairman.

17 Mr. Nix. Mr. Derwinski.

18 Mr. Derwinski. I think that it is interesting that we keep
19 expressing the fears here which Mrs. Spellman just did, that some
20 one doesn't use that category of whistleblower as a sort of
21 shield for all actions. Now, I realize that my general title
22 given to me in this Committee is not whistleblower; It's more,
23 I think, "pain in the neck" is what most members consider.

24 Mrs. Spellman. I thought it was the porter of the Adminis-
25 tration.

1 Mr. Derwinski. But I would like to point out that I am
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3 intrigued by two things. First, that Mrs. Schroeder gave Mr.
4 Hanley credit for helping draft her amendment. And Mr. Hanley
5 comes in with the perfecting amendment to an amendment which he
6 is a major contributor, which leaves me to believe communications
7 are what they ought to be somewhere.

8 Mr. Hanley. Will the Gentleman yield?

9 Mr. Derwinski. Yes, I'll yield to the Gentleman.

10 Mr. Hanley. I appreciate the Gentleman's yielding, but
11 being a human being, and certainly as such not infallible, and
12 I think we'll all agree that from time-to-time we make over-
13 sights. And the intent of my amendment -- and Mrs. Schroeder
14 agrees -- is to hopefully better accomplish the fundamental
15 intent of the basic amendment, the Schroeder amendment, that
16 we are dealing with. And the Gentleman would agree that from
17 time-to-time we have the occasion to make these changes.

18 Mr. Derwinski. I compliment the Gentleman for his modesty,
19 because I recall a document called H.R. 7700 that had the stamp
20 of infallibility.

21 (Laughter.)

22 Mr. Hanley. Speaking of that, if the Gentleman will yield
23 further.

24 (Laughter.)

25 Mr. Derwinski. I just want to point out at the risk of
sounding like a real S.O.B., the Gentleman stated -- and this,